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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	:	Chapter 11
CIRCUIT CITY STORES, INC., et al.,	:	Case No. 08-35653 (KRH)
Debtors.	:	Jointly Administered

DEBTORS' PRELIMINARY OBJECTION AND RESPONSE TO THE MOTION OF PLUMCHOICE, INC. FOR ORDER DIRECTING DEBTORS TO PAY ADMINISTRATIVE EXPENSES PURSUANT TO 11 U.S.C. § 503(b) AND 507(a) AND REQUEST FOR RELATED RELIEF

The debtors and debtors in possession in the above-captioned jointly administered cases (collectively,

"Circuit City" or the "Debtors")[1] hereby object and provide a preliminary response (the "Objection") to the Motion of PlumChoice, Inc. ("PlumChoice") for Order Directing Debtors to Pay Administrative Expenses Pursuant to 11 U.S.C. § 503(b) And 507(a) And Request For Related Relief (the "Motion") (D.I. 1832). In support of the Objection, the Debtors respectfully represent as follows:

BACKGROUND

A. The Bankruptcy Cases

1. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc.(6796), Sky Venture Corp. (0311), Prahs, Inc.(n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

2. On January 12, 2009, the Court entered an order authorizing the Debtors to conduct auctions for a sale or sales of the Debtors' businesses as a going concern or for liquidation (D.I. 1460).

3. At the conclusion of the auction, the Debtors' determined that the highest and otherwise best bid was that of Great American Group WF, LLC, Hudson Capital Partners, LLC, SB Capital Group, LLC, and Tiger Capital Group, LLC (collectively, the "Agent"). On January 16, 2009, the Court approved the Agent's bid and authorized the Debtors to conduct going out of business sales at the Debtors' remaining stores (D.I. 1634). The Agent commenced going out of business sales at the Debtors' remaining stores on January 17, 2009.

B. The PlumChoice Motion.

4. By the Motion, PlumChoice seeks allowance and immediate payment of administrative expense claims in the total amount of $3,826,504.45 allegedly on account of post-petition services (and related costs) provided to the Debtors under three separate agreements. See Motion at ¶ 22.

C. The Dispatch Agreement.

5. On or about May 31, 2006, Circuit City and PlumChoice entered into a dispatch agreement pursuant to which Circuit City engaged PlumChoice to perform telephonic dispatch support and scheduling services to Circuit City's home theater installation, home delivery and personal computer service business units (the "Dispatch Agreement"). Motion at ¶ 5.

6. PlumChoice seeks allowance and immediate payment of an administrative expense claim in the amount of $230,962.73 allegedly on account of services provided under the Dispatch Agreement on or after the Petition Date (the "Dispatch Claim"). Motion at ¶ 6.

D. The Remote Services Agreement.

7. On or about February 15, 2007, Circuit City and PlumChoice entered into a remote services agreement pursuant to which Circuit City engaged PlumChoice to provide online, remote diagnostic services to Circuit City customers (the "Remote Services Agreement"). Motion at ¶ 3.

8. PlumChoice seeks allowance and immediate payment of an administrative expense claim in the amount

of $110,111.30 allegedly on account of services provided under the Remote Services Agreement on or after the Petition Date (the "Remote Services Claim"). Motion at ¶ 4.

E. The PTS Services Agreement.

9. On or about May 29, 2008, Verizon Corporate Services Group, Inc. ("Verizon") and Circuit City entered into a General Services Agreement (the "Prime Contract") pursuant to which Verizon engaged Circuit City to provide remote diagnostic and sales support personal computing services to Verizon's customers. Motion at ¶ 9.

10. In connection with the Prime Contract, PlumChoice and Circuit City entered into a Premium Technical Support Services Agreement (the "PTS Services Agreement") pursuant to which Circuit City engaged PlumChoice as a subcontractor to provide remote technical services ("Remote PTS Services") to Verizon and its customers. Motion at ¶ 10.

11. Prior the Petition Date, Verizon sent Circuit City correspondence wherein Verizon alleged that Circuit City was in violation of various provisions of

the Prime Contract and threatened to terminate the such contract. These breaches, however, related to breaches by PlumChoice under the PTS Services Agreement.

12. Although Circuit City disputed that Verizon was permitted to terminate the Prime Contract, Verizon exercised its alleged rights and asserted that the Prime Contract terminated shortly after the Petition Date. In an effort, among other things, to mitigate its damages resulting from PlumChoice's breaches and avoid protracted litigation with Verizon, Circuit City negotiated a consensual resolution with Verizon and memorialized the terms of the resolution in a letter agreement (the "Verizon Settlement Agreement").

13. The Verizon Settlement Agreement resolves all issues related to the Prime Contract, other than a final invoice. In particular, the Debtors and Verizon agreed that the Prime Contract was rejected and terminated effective December 31, 2008. Verizon agreed to pay the Debtors a portion of amounts under the Prime Contract that were in dispute and amounts due under a "final invoice", which covered the period through December 31, 2008. And, the Debtors and Verizon agreed

that nothing in the Verizon Settlement Agreement was intended to or would impair Circuit City's rights vis-a-vis PlumChoice.[2]

14. According to PlumChoice, by operation of the PTS Services Agreement, such agreement was automatically terminated on the same date the Prime Contract with Verizon was terminated.

15. By the Motion, PlumChoice seeks allowance and immediate payment of an administrative expense claim in the amount of $798,560.18 allegedly on account of Remote PTS Services provided under the PTS Services Agreement on or after the Petition Date through December 31, 2008 (the "PTS Claim"). Motion at ¶ 10.

F. Other Asserted Administrative Expense Claims.

16. PlumChoice also seeks allowance and immediate payment of administrative expense claims in the amount of (i) $1,878,766.24 allegedly on account of certain contractual infrastructure costs (the "Infrastructure Costs") relating to the purported termination of the PTS Services Agreement, and (ii)

[2] The motion to approve the Verizon Settlement Agreement is scheduled to be heard on February 13, 2009.

$808,104.00 allegedly on account of certain contractual wind-down expenses (the "Wind-Down Expenses") relating to the purported termination of the PTS Services Agreement. A summary of all administrative expense claims sought by PlumChoice follows below:

Description	**Amount Allegedly Due**
Post-Petition Services under Remote Services Agreement	$110,111.30
Post-Petition Services under Dispatch Agreement	$230,962.73
Post-Petition Services under PTS Services Agreement	$798,560.18
Infrastructure Costs under PTS Services Agreement	$1,878,766.24
Wind-Down Expenses under PTS Services Agreement	$808,104.00
Total	**$3,826,504.45**

G. Pre-petition Transfers To PlumChoice.

17. The Debtors' records reflect that the Debtors made at least ten pre-petition transfers to PlumChoice during the 90-day period prior to the Petition Date (collectively, the “Pre-petition

Transfers"). Relevant information relating to the Pre-petition Transfers is as follows:[3]

Payment Date	Payment Amount	Invoice Date(s)
8/21/08	$101,689.40	1 Invoice dated July 31, 2008.
8/28/08	$35,713.50	1 Invoice dated August 1, 2008.
8/28/08	$415,901.32	4 Invoices dated August 1, 2008.
9/23/08	$155,074.95	2 Invoices dated August 31, 2008.
9/25/08	$483,987.56	6 Invoices dated between July 1, 2008 and September 1, 2008.
9/30/08	$157,032.61	1 Invoice dated September 1, 2008.
10/1/2008	$315,662.64	2 Invoices dated August 1, 2008.
10/3/08	$76,838.92	2 Invoices dated between August 1, 2008 and September 1, 2008.
10/9/08	$104,278.12	2 Invoices dated between June 1, 2008 and September 1, 2008.
10/21/08	$431,500.00	2 Invoices dated between August 1, 2008 and August 31, 2008.

[3] The Debtors transferred an additional $1.8 million in wires to PlumChoice during the 90-day period, but the Debtors have thus far been unable to reconcile the wires to any invoices. The Debtors reserve the right to amend and/or supplement this information at any time as the claims reconciliation process continues.

PRELIMINARY OBJECTION

18. By the Motion, PlumChoice seeks allowance and payment of substantial administrative expense claims. The Debtors respectfully submit that the Motion should be denied or adjourned because it is premature and because the Debtors require an opportunity to evaluate and reconcile the claims asserted by PlumChoice. Additionally, as further discussed below, even at this stage the Debtors dispute many of PlumChoice's factual allegations and legal conclusions, and additional factual development and/or discovery on the issues is necessary.

I. ADJUDICATION OF THE ALLOWED AMOUNT OF THE PLUMCHOICE CLAIMS IS PREMATURE AT THIS TIME.

19. As discussed more fully in section III below, the Debtors have not completed their reconciliation of Dispatch Claim, the Remote Services Claim or the PTS Claim. Although the accounting system did show amounts due to PlumChoice under the PTS Services Agreement, the Debtors have not had sufficient time to reconcile the discrepancy between the Debtors' records and the PTS Claim in favor of the Debtors.

Likewise, the Debtors have not had sufficient time to reconcile the Remote Services or Dispatch Claim and, as of the filing of this Motion, believe that both claims are overstated.

20. Additionally, it appears that PlumChoice was the recipient of the Pre-petition Transfers, which are transfers on account of antecedent debts, made within 90 days of the Petition Date, while the Debtors were presumed insolvent, and that may have allowed PlumChoice to receive more than it would have had such transfers not been made. Based on these facts, there is a colorable claim that the Pre-petition Transfers are avoidable under Bankruptcy Code section 547. See 11 U.S.C. § 547(b) (setting forth the requirements of an avoidable transfer thereunder).

21. Given the potential avoidability of the Pre-petition Transfers, Bankruptcy Code section 502(d) provides that all of PlumChoice's asserted administrative claims should be held in abeyance pending resolution of any avoidance actions. Specifically, Bankruptcy Code section 502(d), provides as follows:

> the court shall disallow any claim of any entity from which property is recoverable under section . . . 550 . . . of this title or that is a transferee of a transfer avoidable under section . . . 547 . . . of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section . . . 550 . . . of this title.

11 U.S.C. § 502(d). Thus, section 502(d) expressly and unequivocally applies to "any claim of any entity." See also Central Virginia Community College v. Katz, 546 U.S. 356, 271 (2006)(noting that, under section 502(d), if the [creditor] has a claim against the bankrupt estate, the avoidance determination operates to bar that claim until the preference is turned over); In re Bob Grissett Golf Shoppes, Inc., 50 B.R. 598, 607 (Bankr. E.D. Va. 1985)("[S]ection 502(d) requires that the court disallow the claim of any entity that has been the recipient of an avoidable transfer unless the entity has disgorged the property.").

22. Section 502(d) "is designed to assure an equality of distribution of the assets of the bankruptcy estate" among similarly situated parties in interest. Campbell v. United States (In re Davis), 889 F.2d 658, 662 (5th Cir 1989); see also Keppel v. Tiffin Sav. Bank,

197 U.S. 356, 361 (1905)(discussing Bankruptcy Act section 57g, the precursor to section 502(d), and finding that the "fundamental purpose of the provision in question was to secure an equality of distribution of the assets of a bankrupt estate"). It is further "intended to have a coercive effect of insuring compliance with judicial orders." Davis, 889 F.2d at 661.

23. In order to effectuate the purposes of 502(d), "a claim may be disallowed at least temporarily and for certain purposes, subject to reconsideration, simply upon the allegation of an avoidable transfer." In re Lambert Oil Co., 347 B.R. 508, 522, n. 6 (W.D. Va. 2006)(citing 4 Collier on Bankruptcy ¶ 502.05[2][a] (15th ed. rev. 2003)). Thus, disallowance under section 502(d) does not require that the transfer have been previously avoided. See also In re Red Dot Scenic, Inc., 313 B.R. 181, 185 (Bankr. S.D.N.Y. 2004)("The plain language of section 502(d) does not condition disallowance on the transferee's failure to satisfy a judgment; instead, it states that 'the court shall

disallow any claim of any entity from which property is recoverable . . .'" (emphasis in original)).

24. At this time, the Debtors have not completed their analysis of Pre-petition Transfers or commenced any avoidance actions. Indeed, the Debtors are still well within the time limits set by Bankruptcy Code section 546(a) to do so. Notwithstanding the foregoing, because the facts suggest that PlumChoice may have received one or more avoidable transfers, PlumChoice's administrative claims should be held in abeyance pending resolution of any avoidance actions against it.

II. PLUMCHOICE HAS FAILED TO ESTABLISH THAT THE WIND DOWN EXPENSES AND INFRASTRUCTURE COSTS ARE ADMINISTRATIVE EXPENSES UNDER BANKRUPTCY CODE SECTION 503.

25. Administrative expense claims under Bankruptcy Code section 503(b)(1)(A) are limited to "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). To grant an expense administrative priority under Bankruptcy Code section 503(b), the Court must find that the expense was an actual expense of the estate and that payment of the

expense is necessary to preserve the Debtors' estate. See Ford Motor Credit, 35 F.3d at 866 ("The modifiers 'actual' and 'necessary' must be observed with scrupulous care[.]" (citation omitted)).

26. As the party filing an administrative claim, PlumChoice bears the burden of proving that its claim is entitled to administrative priority under Bankruptcy Code section 503. See, e.g., In re MERRY-GO-ROUND ENTERPRISES v. SIMON DEBARTOLO GROUP, 180 F.3d 149, 157 (4th Cir. 1999) (holding that the creditor "has the burden of proving that its administrative claim . . . is an actual and necessary expense"); Ford Motor Credit Co. v. Dobbins, 35 F.3d 860, 866 (4th Cir. 1994) (same).

27. In addition to demonstrating that the Wind Down Expenses and Infrastructure Costs are "actual" and "necessary", to carry their burden, the Movants must demonstrate that (1) the expense and right to payment arise from a post-petition transaction with the debtor, and (2) the consideration supporting the right to payment provides some benefit to the estate. MERRY-GO-ROUND, 180 F.3d at 156; Stewart Foods v. Broecker (In re Stewart Foods), 64 F.3d 141, 145 n.2 (4th Cir. Va. 1995);

see also CIT Commun. Fin. Corp. v. Midway Airlines Corp. (In re Midway Airlines Corp.), 406 F.3d 229, 236 (4th Cir. 2005) (compiling cases that articulated substantially similar standards). PlumChoice has failed to (and indeed cannot) prove either element.

a. Plumchoice Has Failed To Prove The Existence Of A Post-Petition Transaction With The Debtors.

28. PlumChioce contends that the Debtors and PlumChoice entered into a post-petition transaction. In support, PlumChoice relies upon termination of the PTS Services Agreement on December 31, 2008. However, this argument ignores the undisputed facts and cases directly on point and recognized by this Court as consistent with Fourth Circuit law.

29. Courts have consistently held that post-petition contractual damage claims arising from pre-petition contracts are not entitled to administrative priority. See, e.g., Einstein/Noah Bagel Corp. v. Smith (In re BCE West, L.P.), 319 F.3d 1166, 1173 (9th Cir. 2003) (holding that a breach of contract claim resulting from post-petition conduct, but arising from a pre-petition contract, did not arise from a post-petition

transaction with the debtor); In re Sheehan Mem. Hosp., 377 B.R. 63, 67 (Bankr. W.D.N.Y. 2007) (concluding that an employment termination claim arose not from post-petition conduct, but from the execution of a pre-petition contract). Indeed, this Court previously recognized that this legal principle was consistent with Fourth Circuit law. See In re US Airways Group, Inc., 296 B.R. 673, 681 (E.D. Va. 2003) (noting that the 9th Circuit Court of Appeals' decision in Einstein was consistent with Fourth Circuit law).

30. Guide by this principle, it becomes evident that the Wind Down Expenses and Infrastructure Costs are not entitled to administrative priority under Bankruptcy Code section 503. As described above, the Wind Down Expenses and Infrastructure Costs resulted from termination of the PTS Services Agreement. As PlumChoice concedes, the PTS Services Agreement was executed May 21, 2006 (more than 2 years before the Petition Date). Additionally, the Debtors assert that PlumChoice was in breach of the PTS Services Agreement prior to the Petition Date. As a result of PlumChoice's pre-petition breaches, Verizon initiated termination of

the Prime Contract pre-petition. Based on Verizon's pre-petition actions, the Debtors entered into negotiations with Verizon to attempt, among other things, to mitigate any damages resulting from PlumChoice's breaches. Without dispute, all of foregoing events occurred pre-petition.

31. In fact, the only transaction seemingly related to the PTS Services Agreement that occurred post-petition was a transaction that did not involve PlumChoice. Instead, the Debtors and Verizon entered into the Verizon Settlement Agreement whereby the Prime Contract was terminated. Once the Prime Contract was terminated, the PTS Services Agreement automatically terminated. Thus, PlumChoice is attempting to bootstrap the Debtors' transaction with Verizon as a post-petition transaction between the Debtors and PlumChoice. Similar attempts have been rejected. See In re FP Label Co., 2004 Bankr. LEXIS 1248, *5 (Bankr. C.D. Ill. Aug. 25, 2004) (rejecting creditor 1's attempt to "bootstrap" a foreign transaction between the debtor and creditor 2 as a transaction between the debtor and creditor 1 and concluding that creditor 1 was not entitled to an

administrative claim for damages under a pre-petition contract resulting from the transaction to which it was a foreign party).

32. Because PlumChoice has failed to allege a post-petition transaction with the Debtors, PlumChoice has failed to satisfy the first element of an administrative claim.

B. PlumChoice Has Failed To Establish That The Debtors And Their Estates Received A Post-petition Benefit.

33. In addition to the foregoing, before an administrative claim will be allowed, the movant must establish that the Debtors and their estates received a benefit. MERRY-GO-ROUND, 180 F.3d at 156; Stewart Foods, 64 F.3d at 145 n.2. In support of this element, PlumChoice "presumes" that the Debtors believed benefits under the Verizon Settlement Agreement outweighed any burdens under the PTS Services Agreement. Thus, the Debtors estates allegedly received a benefit.

34. However, this argument is as inadequate as it is specious. First, PlumChoice cannot rely on unsubstantiated "presumptions" as factual evidence to satisfy its burden under Bankruptcy Code section 503(b).

See, generally, Austin v. Big Ten Capital Management, LLC (In re Austin), 2006 Bankr. LEXIS 2471 (Bankr. E.D. Va. Sept. 21, 2006) ("Mere conclusions without factual support are insufficient to state a claim upon which relief can be granted.").

35. Second, as PlumChoice concedes, the PTS Services Agreement terminated on December 31, 2008 and the Wind Down Expenses and Infrastructure Costs resulted from such termination. Contrary to PlumChoice's assertions in the Motion, the Debtors believe that PlumChoice ceased providing services thereunder as of that date. Additionally, the Debtors believe PlumChoice was in default under the PTS Services Agreement prior to (and after) the Petition Date and such defaults necessitated termination of the Prime Contract with Verizon. Thus, neither the Debtors nor their estates received any benefit on or after December 31, 2008 under the PTS Services Agreement and likely were damaged prior thereto by PlumChoice's conduct.

36. Assuming, arguendo, the Debtors received some benefit under PTS Services Agreement, this fact alone is insufficient to give rise to an administrative

expense claim under Bankruptcy Code section 503(b)(1). Ford Motor Credit, 35 F.3d at 866 (holding that the debtor must receive a "concrete" benefit). Here, PlumChoice cannot cite a "concrete" benefit. Instead, PlumChoice relies on vague, unsubstantiated statements in its Motion, all of which are insufficient to meet PlumChoice's burden and, at a minimum, require discovery.

37. Consequently, the Court should deny the Motion.

III. ADDITIONAL FACTUAL DEVELOPMENT AND/OR DISCOVERY IS NEEDED.

38. As discussed above, the Motion should be denied because the Debtors have not reconciled PlumChoices' Dispatch, Remote Services and PTS Claims and dispute the Wind Down Expenses and Infrastructure Costs in their entirety.

39. Moreover, the "burden of proof on an application for payment of an administrative expense is on the applicant . . . . Administrative expenses are narrowly construed because they run counter to the central premise of bankruptcy distributions which is a pro rata distribution among all creditors." In re

Computer Learning Ctrs., Inc., 298 B.R. 569, 577 (Bankr. E.D. Va. 2003).

40. In this case, PlumChoice has failed to meet its burden at this stage of the proceedings because there exist multiple issues of disputed law and fact that require further development, including but not limited to those set forth above and the following:[4]

41. Dispatch Agreement. The Debtors dispute PlumChoice's allegation that the Debtors unilaterally terminated the Dispatch Agreement on January 20, 2009, and that PlumChoice incurred $43,690.76 in resulting administrative expenses.

42. Infrastructure Costs. PlumChoice alleges it is entitled to $1,878,766.24 as an administrative expense claim on account of Infrastructure Costs associated with the termination of the PTS Services Agreement and Remote Services Agreement on December 31, 2008. See Motion at ¶¶ 15, 25-26. However, the section

[4] As discussed above, at this time, the Debtors have not completed their reconciliation of the Remote Services, Dispatch or PTS Services Claims. Notwithstanding the following discussion, the Debtors reserve all rights to assert that additional amounts asserted by PlumChoice are improper or invalid.

of the PTS Services Agreement relied upon by PlumChoice in the Motion as the basis for these amounts provides that Circuit City must pay certain Infrastructure Costs to PlumChoice "in the event either the Remote Services Agreement or the [the PTS Services Agreement] is terminated prior to December 31, 2008." See Motion at ¶ 11; PTS Services Agreement § 3.3 (emphasis added). Thus, based on the allegations in the Motion, Circuit City would not be required to pay the Infrastructure Costs.

43. Moreover, section 3.3 of the PTS Services Agreement further provides that "[w]ith respect to Infrastructure Costs incurred in excess of Five Hundred Thousand Dollars ($500,000) . . . the Parties hereby agree to negotiate in good faith to determine the appropriate cost allocations, if any, between them." See PTS Services Agreement § 3.3. Yet, here, PlumChoice seeks almost $1.9 million in Infrastructure Costs under the PTS Services Agreement without mention of the contractual provision in its Motion.

44. Wind-Down Expenses. PlumChoice alleges it is entitled to $808,104.00 as an administrative expense claim on account of Wind-Down Expenses

associated with the termination of the PTS Services Agreement and Remote Services Agreement on December 31, 2008. However, it may be argued that the Wind-Down Expenses asserted under the PTS Services Agreement are akin to liquidated damages. Under Virginia law, which governs the PTS Services Agreement, "a liquidated damages clause will be construed as an unenforceable penalty 'when the damage resulting from a breach of contract is susceptible of definite measurement, or where the stipulated amount would be grossly in excess of actual damages.'" O'Brian v. Langley Sch., 507 S.E.2d 363, 365 (Va. 1998). Here, PlumChoice submitted with its Motion documentation allegedly providing details regarding many of the administrative expense claims, but it provided no such detail or breakdown of the Wind-Down Expenses.

45. Further, the "party opposing the imposition of liquidated damages is entitled to conduct discovery and present relevant evidence that the damages resulting from breach of the contract are susceptible of definite measurement or that the stipulated damages are grossly in excess of the actual damages suffered by the

nonbreaching party. Upon proof of either of these elements, a liquidated damages clause becomes an unenforceable penalty." Id.

46. Analysis and Reconciliation. The Debtors have not yet had the opportunity to analyze or reconcile PlumChoice's allegations regarding the necessity and value of post-petition services provided to the Debtors pursuant to the Remote Services Agreement, the Dispatch Agreement, and the PTS Services Agreement. The Debtors require the opportunity to conduct such an analysis and reconciliation, lest PlumChoice be improperly awarded administrative expense claims at the expense of the other creditors in these cases. See In re Midway Airlines Corp., 406 F.3d 229, 241 (4th Cir. 2005) ("the general rule is that all administrative creditors in a bankruptcy case are to be treated equally").

47. Debtors' Claims Against PlumChoice. On information and belief, PlumChoice has breached certain of its obligations under the Remote Services Agreement and/or the PTS Services Agreement relating to the screening and hiring of employees to carry out PlumChoice's obligations under those agreements.

Moreover, upon information and belief, PlumChoice's breaches of its agreements with the Debtors caused the Debtors to be in breach of related agreements with third-parties and may have caused or contributed to the termination of those agreements and subsequent damages.

48. As demonstrated above, the Debtors need the opportunity to analyze and develop the issues raised herein and other issues which may present defenses to the alleged administrative claims. Such analysis and development would serve to protect the other creditors in these cases from the improper depletion of the Debtors' estates.

49. To the extent the Court does not deny the Motion outright, the Court should set a reasonable discovery and briefing schedule so at to avoid unnecessary distraction from the Debtors immediate focus of, among other things, maximizing value of the estates through liquidating their remaining assets.

RESERVATION OF RIGHTS

50. The Debtors do not waive and expressly reserve their rights to object to the Motion on any other grounds that applicable law permits and to amend

and modify this objection and preliminary response to assert such other grounds as a further review of the applicable law and the facts obtained in discovery may support.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order denying the relief requested in the Motion.

Dated: February 11, 2009
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